In an affidavit in opposition thereto Alfred N. Heuston stated that the Court had already denied three similar petitions in other causes made by the attorneys for the petitioner here and that questions of law raised by said petition were dealt with in those cases, and asked that the motion to vacate the stay be denied (R. 23). The papers in the other cases are not in the record. The alleged policy of liability insurance is not in the record. The Court entered an order on March 20th, 1935, denying the motion to vacate the stay (R. 25-26) with leave to the petitioner to go before a Special Master.

The petitioner asked leave to appeal to the Circuit Court of Appeals. In allowing the appeal that Court stated (R. 37):

> "Leave to appeal will be granted not because the appellant may have a right to trial by a jury of his claim against the company upon its reorganization, but because we are in doubt whether the cause will be discharged by the final order in the reorganization proceedings; Sec. 77-B (h), (k) and (o). If it will not be, it may be that the court should not stay the action at all; Sec. 11 (a).
>
> "The briefs and argument will not, therefore, touch the right of trial by jury of the claim in reorganization as to which leave is denied; it will be confined to whether the action can be stayed at all".

The record was made up and briefs submitted on the basis of the questions outlined by the Circuit Court of Appeals in its memorandum. The Circuit Court of Appeals handed down its first opinion on January 6, 1936, in which it held that the claim was both provable and dischargeable in the reorganization proceedings and the Court was authorized by the Act to issue the injunction, and then proceeded

to consider matters beyond the scope of its memorandum which had not been briefed or argued, namely: the application of the Insurance Law of the State of New York to liability insurance policies, and stated (R. 51-52):

> "The appeal should not be finally determined without giving the parties a chance to present their views as to whether the District Court ought not to allow the state court action to proceed to judgment. There would be no occasion to do this if the appellant Foust is willing to stipulate not to use any judgment recovered in his favor as a claim against the debtor's estate. But, if such a stipulation is not filed by the appellant within three days, supplemental briefs shall be filed within ten days thereafter relating to the propriety of the exercise of judicial discretion of the District Court, whereupon we shall determine whether the stay ought to stand in the absolute form in which it was granted".

If the stipulation had been filed by the petitioner as outlined in the opinion, the Debtor and the Trustees would have applied for a rehearing, but the petitioner declined to so stipulate. The Court in its further opinion, (R. 53) stated:

> "One of the reasons he gives for not so stipulating is that the liability policy contains a deductible clause whereby the insured Munson Steamship Line became self-insurer for the first $2,500 of the claim and 'as the value of the Foust claim is not over $5,000 such stipulation would mean that the administrator would relinquish a substantial part of his claim.' "

and stated (R. 53):

> "* * * As the estate of the debtor had a substantial interest in the amount of the recovery, the

judge in charge of the section 77B (11 U. S. C. A. §207) proceeding did not abuse his discretion in promoting that interest and in adopting the mode of liquidating the claim which he selected. That mode was more convenient and expeditious than any other and was plainly an advantage to the estate * * *".

Summary of Argument.

The petitioner's claim is both provable and dischargeable in the 77B reorganization proceeding. The amendment defines "creditors" to include "all holders of claims of whatever character against the debtor" and the term "claims" includes "debts, securities, other than stock, liens, or other interests of whatever character [Subdivision (b)(10)]. These definitions are sufficiently broad to include the petitioner's claim. The decree approving the plan of reorganization shall "discharge the debtor from its debts and liabilities" [Subdivision (h)]. The petitioner's claim is certainly a liability of the debtor.

The District Court was given power to enjoin the continuation of the petitioner's suit [Subdivision (c)(10)] and was given power to "refer any matters to a special master * * * for consideration and report, either generally or upon specified issues" [Subdivision (c)(11)], and the District Court during the pendency of the reorganization proceedings shall "have exclusive jurisdiction of the debtor and its property wherever located". The District Court had discretionary power to stay the petitioner's action at law and refer his claim to a special master.

The question of any liability insurance that the debtor might have is not relevant or material to the determination of the debtor's liability. There is no policy in the record.

There are only general statements concerning it, except one made in the Circuit Court of Appeals that the deductible was $2,500 and that this was half of the estimated value of the petitioner's claim.

The petitioner was not entitled to a jury trial as a matter of right. In proceedings for limitation of liability claims of seamen under the Jones Act, such as the petitioner's here, are liquidated in the Admiralty Court without a jury trial. *Langnes* v. *Green,* 282 U. S. 531; *Ex Parte Green,* 286 U. S. 437 (same case). It was the practice of Courts of Equity before the adoption of the Constitution to handle insolvent estates and to liquidate claims against those estates before referees or masters without juries. *Matter of Empire State Bank,* 18 N. Y. 199, 210; *Sands* v. *Kimbark,* 27 N. Y. 147.

The District Court exercised sound discretion in having all claims against the debtor's estate liquidated before a special master. This saved the trustees expense, avoided delay and insured uniformity of treatment of all claimants or creditors.

ARGUMENT.

The judgment of the Circuit Court of Appeals should be affirmed.

POINT I.

Tort claims are provable and dischargeable in reorganization proceedings under 77B.

One of the purposes of Congress in enacting the Corporate Reorganization Amendment of the Bankruptcy Act, known as 77B (11 U. S. Code, 207) was to permit corporations which were in financial difficulties to readjust their obligations and continue as going concerns so that those values which attach to a going business and which are lost through liquidation might be preserved for the benefit of those interested in the corporation. It would be extremely difficult, if not impossible, to reorganize a corporation and have it continue its business with one class of creditors free to attack the assets as soon as it was reorganized and the other class or classes barred from doing so. Congress intended that all those having claims against or interest in the corporation should be parties to the proceedings, should have their rights adjusted and should be bound by the final decree. The Amendment provides (11 U. S. Code, 207):

> "(b) A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either

through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character or otherwise. * * *''

and then defines the terms ''creditors'' and ''stockholders'':

''(10) * * * The term 'creditors' shall include for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims of whatever character against the debtor or its property, including claims under executory contracts, whether or not such claims would otherwise constitute provable claims under this title. The term 'claims' includes debts, securities, other than stock, liens, or other interests of whatever character. * * *''

Then in dealing with a plan of reorganization:

''(h) * * * Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, by way of injunction or otherwise, and closing the case. *Such final decree shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan or as may be reserved as aforesaid.* * * *'' (Italics ours.)

The definitions of the term ''creditors'' and ''claims'' are including and not excluding definitions. The term ''creditors'' includes ''all holders of claims of whatever character against the debtor or its property''. Claims are not limited to debts. This is shown by the definition of claims, which

> "includes debts, securities, other than stock, liens, or other interests of whatever character."

The petitioner has no interest in the debtor's property but he has a claim *in personam* against the debtor, and therefore an interest in its affairs.

Congress did not adopt for the purposes of reorganization the definitions of "claims" and "creditors" used in the Bankruptcy Act itself and did not intend to apply the test of the claims that might be proved and that might be discharged in cases of liquidation to cases of reorganization. It set new standards and new tests.

Congress provided in Subdivision (c)(8) that if a plan of reorganization is not proposed or accepted, or if proposed and accepted is not confirmed, the District Judge may order and direct the estate to be liquidated, and in case of such liquidation, provided in Subdivision (k):

> "claims which are provable under section 103 of this title may be proved as provided in Section 93, * * *"

and then states:

> "* * * None of the sections enumerated in this subdivision (k), except subdivisions (g), (i), (j), and (m) of section 93 of this title, and subdivisions (a) and (e) of section 110 of this title, shall apply to proceedings instituted under this section unless and until an order has been entered directing the trustee or trustees to liquidate the estate. * * *"

It was the intention of Congress to make the terms "creditors" and "claims" broader under the amendment than they had been under the Bankruptcy Act. This is shown by the sections referred to above, by the general

purposes of the amendment and by the provision that the final decree

> "shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan or as may be reserved as aforesaid."

The term "liabilities" is not defined in the Act, but should be broad enough to include any claim which might ripen into a judgment for the payment of money. It was the intent of Congress to adjust every obligation and every liability of the debtor and every interest in the debtor and its property in the plan of reorganization and to provide that after the final decree was entered confirming and approving the plan of reorganization, no one should have any rights against the debtor or its property, except as set forth in that plan. It is difficult to see how corporations could otherwise be successfully reorganized.

POINT II.

The District Court was authorized to enjoin the continuation of the petitioner's suit.

The District Court was granted broad powers. Subdivision (c)(10) provides:

> "(10) in addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continu-

ance of any judicial proceeding to enforce any lien upon the estate until after final decree; and (11) may refer any matters to a special master, who may be one of the referees in bankruptcy, for consideration and report, either generally or upon specified issues, * * *."

It is provided in (a):

"* * * the court in which such order approving the petition or answer is entered shall, during the pendency of the proceedings under this section, have exclusive jurisdiction of the debtor and its property wherever located for the purposes of this section, and shall have and may exercise all the powers, not inconsistent with this section, which a Federal court would have had it appointed a receiver in equity of the property of the debtor by reason of its inability to pay its debts as they mature * * *".

Section 11 (a) of the Bankruptcy Act (U. S. Code, Title 11, Section 29 (a)) provides:

"A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or a dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined".

Under Section 29 (a) the staying of a suit founded on a provable claim is mandatory. Under the Amendment Congress gave the District Court discretion to stay the com-

mencement or continuance of any judicial proceeding, and also gave it

> "exclusive jurisdiction of the debtor and its property wherever located"

for reorganization purposes. The giving to the District Court of exclusive jurisdiction over the debtor in and of itself is enough to exclude the other courts from jurisdiction and prevent their continuing suits pending at the time of the commencement of the reorganization proceedings.

In speaking of this provision, Mr. John Gerdes (Vol. IV., Brooklyn Law Review, 288) states:

> "In proceedings under Section 77B, the court, after the approval of the petition, is expressly vested with 'exclusive jurisdiction of the debtor • • • wherever located'. The 'exclusive jurisdiction' of one court prevents all other courts from determining controversies relating to the object of such jurisdiction. It would seem, consequently, that no other court would have any jurisdiction whatever over the debtor, once the petition had been approved".

The power to stay proceedings and the exclusive jurisdiction over the debtor and its property show an intent on the part of Congress that the Reorganization Court shall settle all controversies involved in the reorganization, including the liquidation of claims against the debtor. This is quite different from an equity receivership where the court has exclusive jurisdiction over the property of the debtor, but by virtue of the provisions of Section 265 of the Judicial Code (28 U. S. Code, Annot. 379) the district court's power to stay proceedings in any state court is limited to those authorized by law relating to proceedings in bankruptcy.

In this connection, Mr. John Gerdes (Vol. IV., Brooklyn Law Review, 237-238) states:

> "Effective reorganization calls for a single agency, with complete and paramount jurisdiction over the debtor and its property, to administer the assets while the proceedings are pending and to determine all claims involving the debtor estate. Such centralization occurs in part in bankruptcy, where the trustee gets title to all the debtor's property from the date of adjudication. Section 77B employs the same device in reorganization proceedings to secure unity of control over the debtor and its entire property".

In dealing with the Railroad Reorganization Amendment (Sec. 77) this Court said in *Continental Ill. Nat. B. & T. Co.* vs. *Chicago, Rock Island & Pacific Co.*, 79 L. Ed. 642, 653:

> "Section 77 advances another step in the direction of liberalizing the law on the subject of bankruptcies. Railway corporations had been definitely excluded from the operation of the law in (June 25), 1910 (chap. 412, §4, 36 Stat. at L. 838, 839, U. S. C. title 11, §22), probably because such corporations could not be liquidated in the ordinary way or by a distribution of assets. A railway is a unit; it cannot be divided up and disposed of piecemeal like a stock of goods. It must be sold, if sold at all, as a unit and as a going concern. Its activities cannot be halted because its continuous, uninterrupted operation is necessary in the public interest; and, for the preservation of that interest, as well as for the protection of the various private interests involved, reorganization was evidently regarded as the most feasible solution whenever the corporation had be-

> come 'insolvent or unable to meet its debts as they mature.'
>
> "Equity receiverships, resorted to for that purpose have never been satisfactory for many reasons. Partly, no doubt, in recognition of that situation, Congress, by §77, added railroad corporations to the category of those who might have relief by legislation passed in virtue of the bankruptcy clause of the Constitution; and determined after consideration, that such relief to be effectual should take the form of a reorganization, and should extend to cases where the corporation is 'unable to meet its debts as they mature.' The last phrase, since it is used as an alternative for the word 'insolvent,' obviously means something less than a condition of 'bankruptcy' or 'insolvency' as those words are employed in the law."

In that case the District Court had enjoined the sale of collateral, which consisted of bonds of the debtor and its subsidiaries which had been given to secure bonds and notes. The Court's authority to enjoin the sale of such securities was challenged. There was no provision in Section 77 expressly giving that authority. The basis of the District Court's decision, as stated by this Court, was:

> "That under paragraph 15 of §2 of the Bankruptcy Act, the Court had power to make such orders, issue such process, and enter such judgments as might be necessary for the enforcement of the Act; and that it was necessary for the enforcement of Section 77 that the holders of the collateral be enjoined and restrained from selling or disposing of the same pending the preparation and consummation of a reorganization plan."

and in dealing with this question this Court said:

> "It may be that in an ordinary bankruptcy proceeding the issue of an injunction in the circumstances here presented would not be sustained. As to that it is not necessary to express an opinion. But a proceeding under §77 is not an ordinary proceeding in bankruptcy. It is a special proceeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised. And to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile."

The Corporate Reorganization Amendment was passed by Congress after the decision of the District Court and prior to the decision of the Circuit Court of Appeals in the *Rock Island* case. It is significant that Congress then gave the district court the power which it had exercised in the *Rock Island* case, and in addition gave it exclusive jurisdiction over the debtor—another indication of the intention of Congress to enable the district court to decide every controversy involved in the reorganization, including the liquidation of claims.

POINT III.

The petitioner is not entitled to a jury trial as a matter of right.

A Court of Admiralty in proceedings for limitation of shipowners' liability liquidates all claims without jury trials.

In *Langnes* v. *Green*, 282 U. S. 531, 75 Law. Ed. 520, this Court said in referring to an injunction issued by an Admiralty Court in liquidation proceedings against the prosecution of a suit in a State Court for personal injuries under the Jones Act at pages 539-540:

> "The situation, then, is that one Statute gave respondent the right to a common-law remedy, which he properly sought in the State Court, and another Statute gave the petitioner the right to seek a limitation of liability in the Federal District Court. Needless to say that if the case for a limitation of liability assumes such a form that only a Federal Court is competent to afford relief, the jurisdiction of that Court is exclusive and must be exerted to dispose of the entire cause; and the action in the State Court may not be further prosecuted."

When this case was before this Court a second time (*Ex parte Green*, 286 U. S. 437, 76 Law. Ed. 1212) this Court stated at page 440 (Law. Ed. 1214):

> "Notwithstanding the foregoing, Green, following the remission of the cause to the State Court, put in issue the right of the owner to limited liability, by challenging the seaworthiness of the vessel and the lack of the owner's privity or knowledge. The matter was properly brought before the Federal District Court, and that Court held that the question of the owner's right to limited liability having been raised, the cause became cognizable only in admiralty, and that its further prosecution in the State Court should be enjoined. In this the District Court was right and the motion for leave to file a petition for writ of mandamus must be denied."

Prior to the adoption of the Bankruptcy Act, and even prior to the adoption of the Constitution, the Courts of Equity ordinarily administered insolvent estates and disposed of the controversies involved, including the liquidation of claims.

In *Matter of Empire State Bank,* 18 N. Y. 199, 210, Chief Justice Denio said:

> "* * * The winding up and settling of the affairs of insolvent corporations fell within the jurisdiction of Courts of Equity from the nature of the case, the forms used in Courts of Law not being adapted to such controversies; and we accordingly find that it was the constant practice of the Court of Chancery to entertain suits for that purpose and by its decree to determine who were stockholders and contributors, and in what proportions they were to contribute, and to cause an account to be taken of the unsatisfied debts and liabilities, and to decree a distribution accordingly."

And in *Sands* v. *Kimbark,* 27 N. Y. 147, in a concurring opinion, he said:

> "But long before the adoption of the Constitution a practice had grown up of winding up and settling the affairs of insolvent estates and insolvent corporations, and of estates in the hands of trustees, by suits in equity; and another practice had, under legislative authority, prevailed to a considerable extent, of settling such estates by subjecting the demands in favor of or against them to adjudication by Referees appointed by mutual consent, or if such consent could not be obtained, by the appointment of such Referees on the application of one of the parties to a Court or Judge."

The petitioner relies upon the provisions of the amendment of the Bankruptcy Act providing for the reorganization of railway corporations, known as Section 77, Title 11, U. S. Code Sec. 205. It provided in Subdivision (j) that suits or claims for damages caused by the operation of trains, buses or other means of transportation, may be filed or prosecuted to judgment in any Court of competent jurisdiction and any order staying the prosecution of any such cause of action, upon appeal shall be vacated. This amendment applies only to railroad corporations. The proceedings for the reorganization of the Debtor, Munson Steamship Line, are under Section 77B. It is not reorganized as a railway corporation, and the provisions above referred to have no application to it.

It is further contended that Section 33 of the Merchant Marine Act of 1920, Title 46, U. S. Code, Annot., Sec. 688, extends to seamen all the statutes regulating the right of action for injuries or death in case of railway employees. This statute incorporated into maritime law the then existing provisions of the Employers Liability Act pertaining to causes of action for injury or death of railway employees and did not incorporate future acts. It did not incorporate into the maritime law statutes dealing with the reorganization of railway corporations. If Congress had intended Section 77 to apply to water transportation companies, it would have said so. If it had meant the amendment of Section 77 prohibiting the staying of actions for personal injuries to apply to steamship corporations as well as railway corporations, it would have said so.

It is submitted that the petitioner is not entitled to a trial by jury as a matter of right.

POINT IV.

There was no abuse of discretion on the part of the District Court in staying the petitioner's common law action and requiring the liquidation of his claim before a special master.

Congress gave the District Court in 77B exclusive jurisdiction over the debtor and its property [Subdivision (a)], gave it power to stay the commencement or continuation of any judicial proceedings [Subdivision (c) (10)], and provided that the District Court [Subdivision (c) (11)]:

> "may refer any matters to a special master, who may be one of the referees in bankruptcy, for consideration and report, either generally or upon specified issues • • •".

In discussing these provisions, Mr. John Gerdes (Vol. IV., Brooklyn Law Review, 237-238) states:

> "Effective reorganization calls for a single agency, with complete and paramount jurisdiction over the debtor and its property, to administer the assets while the proceedings are pending and to determine all claims involving the debtor estate. Such centralization occurs in part in bankruptcy, where the trustee gets title to all the debtor's property from the date of adjudication. Section 77B employs the same device in reorganization proceedings to secure unity of control over the debtor and its entire property."

and in discussing the exclusive jurisdiction given by the Amendment over the debtor and its property, stated (p. 288):

> "In proceedings under Section 77B, the court, after the approval of the petition, is expressly vested with 'exclusive jurisdiction of the debtor • • • wherever located'. The 'exclusive jurisdiction' of one court prevents all other courts from determining controversies relating to the object of such jurisdiction. It would seem, consequently, that no other court would have any jurisdiction whatever over the debtor, once the petition had been approved".

The reorganization of the debtor involves many difficult questions. The purpose of the reorganization is to permit the debtor to continue as a going concern and to preserve those values which would be lost by liquidation. The District Court had every reason for desiring to have all claims against the debtor settled in the reorganization proceedings. The advantage of this was that they would all be measured by a common yardstick and they would be liquidated more promptly by a special master than by various other courts acting independently. Furthermore the Trustees would be put to great expense and the estate of the Debtor to a great burden in defending actions in various state courts. As the Debtor was a shipowner operating vessels, it had to consider the difficulty of having witnesses present in different common law courts against the advantage of being able to produce them more conveniently before a special master. The procedure adopted by the District Court of having multitudinous claims liquidated before a special master is similar to the procedure of Courts of Admiralty in proceedings for limitation of shipowners' liability. *Langnes* v. *Green*, 282 U. S. 531, 75 Law Ed. 520; *Ex Parte Green*, 286 U. S. 437, 76 Law Ed. 1212; *Matter of Empire State Bank*, 18 N. Y. 199, 210; *Sands* v. *Kimbark*, 27 N. Y. 147.

The Insurance Question.

Petitioner bases his claim of abuse of discretion upon the question of insurance. He stated in his moving papers in the District Court that the Debtor had liability insurance. The nature of that insurance, where the policy was issued and the amount of the deductible, if any, were not set forth. Whether they were set forth in the other cases in which counsel who now represent the petitioner represented the moving parties does not appear. Unless the policy were issued in the State of New York, Section 109 of the Insurance Law of the State of New York, referred to in the petitioner's brief, has no application. These matters were not included in the record on appeal because the memorandum allowing that appeal restricted the argument to the question of the power of the District Court to enter the decree enjoining the prosecution of the common law action, and to that question it was not relevant or material. After the case had been argued the Circuit Court of Appeals handed down its first opinion, indicating that it was considering the question of the exercise of the District Court's discretion in view of the statements concerning insurance. Then the petitioner stated to that Court that the policy had a deductible of $2,500; that his claim was not worth over $5,000, and that therefore not more than 50% covered by insurance. The petitioner tried on reargument in the Circuit Court of Appeals, and is trying here, to determine questions of insurance liability prior to the determination of the liability of the debtor, and that without the insurance policy or any of the factors for the determination of insurance liability before the Court. The statements in the record and in the briefs concerning insur-

ance are mere conclusions of law, except as to the deductible of $2,500.

Under his Point Four, on page 22, the petitioner argues that he as a *donee beneficiary* under the policy has a direct right against the insurance company under it, regardless of the provisions of Section 109 of the Insurance Law of the State of New York, and in support of that proposition cites cases dealing with rights against a surety. That question is not in any way raised by anything in the record.

Whatever insurance policies the Debtor may have are its property. The District Court by virtue of its exclusive jurisdiction over the Debtor and its property can, when all the facts are before it, determine and adjust the rights and liabilities of all the parties and see that whatever rights the petitioner may have against the Debtor, or an insurance company which issued a policy to the Debtor, are properly safeguarded and protected; in other words, it can do complete justice to all parties.

Section 109 of the Insurance Law of the State of New York, as applied to marine insurance policies, is an unconstitutional interference with the uniformity of the admiralty and maritime law. This policy, so far as anything is indicated by the record, covers a marine tort. Such policies are maritime contracts. *Insurance Co.* v. *Dunham,* 11 Wall. 1; *North German Fire Ins. Co.* v. *Adams,* 142 Fed. 439; *The Minnie R.,* 49 Fed. (2d) 121.

The effect of Section 109 as applied to policies of marine insurance is to give a policy issued in the State of New York one effect and another policy issued in the State of New Jersey a different effect. A seaman injured in New York would have one right against the shipowner if it had a policy of insurance issued in the State of New York and

another right if it had a policy issued in New Jersey or some other state. This destroys the uniformity of the maritime law, which was held essential in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205; *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149; *Chelentis* v. *Luckenbach Steamship Co.*, 247 U. S. 372.

There is nothing in the record on which to base any claim of abuse of discretion on the part of the District Judge in requiring the liquidation of the petitioner's claim and of all other similar claims before a Special Master.

POINT V.

Conclusion.

It is respectfully submitted that the judgment of the Circuit Court of Appeals, affirming the order of the District Court, should be affirmed.

Respectfully submitted,

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